

**UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF FLORIDA  
GAINESVILLE DIVISION**

In re:

MATTHEW BRUCE HINTZE &  
LARINA K. HINTZE,

Case No. 12-10462-KKS  
Chapter: 7

Debtors.

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THERESA M. BENDER, et al.,

Adv. No. 14-01005-KKS

Plaintiffs,

v.

MATTHEW BRUCE HINTZE,  
LARINA K. HINTZE, et al.

Defendants.

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**AMENDED ORDER GRANTING CHRISTOPHER JAMES,  
TUTORINGZONE II, LLC, AND CYNTHIA FRENCHMAN'S MOTION  
TO DISMISS, OR, IN THE ALTERNATIVE, MOTION TO ABSTAIN  
(DOC. 156)**<sup>1</sup>

THIS CASE came before the Court for hearing on October 6, 2016 upon *Christopher James, TutoringZone II, LLC, and Cynthia Frenchman's Motion to Dismiss, or, in the Alternative, Motion to Abstain* (the "Motion to Dismiss," Doc. 156) and the Response in Opposition (the "Response," Doc. 165). At the conclusion of

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<sup>1</sup> This Order is being amended to include the basis for granting the Motion to Dismiss, pursuant to the *Order Granting Plaintiff's Motion for Reconsideration of, and to Alter or Amend, Order Granting Christopher James, TutoringZone II, LLC, and Cynthia Frenchman's Motion to Dismiss, or in the Alternative, Motion to Abstain* (Doc. 203).

the hearing, the Court announced that the Motion to Dismiss would be granted, but did not announce the basis for the ruling. On October 11, 2016, the Court entered an order stating simply that the Motion to Dismiss was granted.<sup>2</sup>

On November 25, 2016, Plaintiffs TZ Acquisition, LLC and TutoringZone, LC (collectively, “Plaintiffs”) filed a motion for reconsideration of, or to alter or amend the Order, to which Defendants objected.<sup>3</sup> After hearing argument on December 1, 2016, the Court agreed to grant Plaintiffs’ Motion for Reconsideration and to amend the Order granting the Motion to Dismiss.<sup>4</sup> The basis for this Court’s grant of the Motion to Dismiss, and clarification that the dismissal shall not be construed as a dismissal on the merits or *res judicata*, are set forth below.

### Analysis

On April 14, 2014 the Chapter 7 Trustee filed a twenty (20) count Complaint commencing this Adversary Proceeding.<sup>5</sup> Almost a year later, in the Administrative Case the Trustee requested authority to sell property of the estate, specifically including any and all interest of the estate in TutoringZone, LC (“TZ1”) and “[a]ll

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<sup>2</sup> *Order Granting Christopher James, TutoringZone II, LLC, and Cynthia Frenchman’s Motion to Dismiss, or, in the Alternative, Motion to Abstain* (Doc. 183).

<sup>3</sup> *Plaintiffs’ Motion For Reconsideration of, and to Alter or Amend, Order Granting Christopher James, TutoringZone II, LLC and Cynthia Frenchman’s Motion to Dismiss, or in the Alternative, Motion to Abstain* (“Motion for Reconsideration”) Doc. 188; *Objection to Motion For Reconsideration of, and to Alter or Amend, Order Granting Christopher James, TutoringZone II, LLC and Cynthia Frenchman’s Motion to Dismiss, or in the Alternative, Motion to Abstain*, Doc. 198.

<sup>4</sup> *Order Granting Plaintiffs’ Motion for Reconsideration of, and to Alter or Amend, Order Granting Christopher James, Tutoringzone II, LLC, and Cynthia Frenchman’s Motion to Dismiss, or in the Alternative, Motion to Abstain* (Doc. 203).

<sup>5</sup> Doc. 1.

claims and causes of action asserted by the Trustee” in the instant adversary proceeding.<sup>6</sup> After a hearing and competitive bidding at a court-conducted auction, the Court authorized the sale subject to certain objections of Christopher James and TutoringZone II, LLC (“James” and “TZ2”), which were to be resolved at a later date.<sup>7</sup> Those objections centered on what causes of action could, and could not, be sold by the Trustee.

The parties briefed the issues surrounding James’ and TZ2’s objections to the Trustee’s sale of the causes of action alleged in Counts XVI-XX of the Complaint (collectively, the “TZ1 Causes of Action”). Ultimately, the Court sustained those objections on the basis that the causes of action in Counts XVI-XX of the Complaint belonged to TZ1 and not to the Trustee.<sup>8</sup> Since the Trustee did not own those causes of action, the Trustee did not have the legal ability to sell those causes of action. Rather, those causes of action belonged to and stayed with TZ1 upon the Trustee’s sale of the estate’s interest in that entity.

In the Motion to Dismiss this adversary proceeding, filed by James, TZ2 and Frenchman (“Movants”), Movants argue that the TZ1 Causes of Action should be

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<sup>6</sup> *Report and Notice of Trustee’s Intention to Sell Property of the Estate*, Case No. 12-10462-KKS, Doc. 562.

<sup>7</sup> Case No. 12-10462-KKS, Doc. 580.

<sup>8</sup> *See Order Determining Causes of Action Sold or Transferred Pursuant to Order Approving Report and Notice of Trustee’s Intention to Sell (ECF 580), and Sustaining Objection of Christopher James and TutoringZone II, LLC (ECF 574)* (the “Sale Order”), Case No. 12-10462-KKS, Doc. 591. The Sale Order also determined that the Trustee could not convey Counts XIII, XIV, and XV, as those counts, brought under 11 U.S.C. §§ 547 and 548 belonged solely to the Trustee and were not property of the estate. The Trustee subsequently dismissed Counts XIII, XIV, and XV with prejudice. *See* Doc. 171.

dismissed for lack of jurisdiction because they are neither core nor “related to” the bankruptcy case. Plaintiffs do not challenge Movants’ contention that the TZ1 Causes of Action are non-core, but urge that the causes of action should not be dismissed, as they are “related to” this bankruptcy case.

Bankruptcy courts have authority to hear proceedings that “arise under,” “arise in,” or “relate to” a case under Title 11 of the United States Code. 28 U.S.C. § 157. The TZ1 Causes of Action do not “arise under” or “arise in” a case under the Bankruptcy Code; they do “not involve a substantive right created by the federal bankruptcy law,” but are causes of action that could “exist outside of bankruptcy.”<sup>9</sup>

Because the Trustee has sold the estate’s interest in TZ1, the TZ1 Causes of Action are no longer “related to” the bankruptcy. In the Eleventh Circuit,

[T]he test for determining whether a civil proceeding is related to bankruptcy is whether the outcome of the proceeding could conceivably have an effect on the estate being administered in bankruptcy...An action is related to bankruptcy if the outcome could alter the debtor’s rights, liabilities, options or freedom of action (either positively or negatively) and which in any way impacts upon the handling and administration of the bankruptcy estate.<sup>10</sup>

“The jurisdictional grant is broad and the ‘proceeding need not necessarily be against the debtor or against that debtor’s property.’”<sup>11</sup>

<sup>9</sup> *In re Davis*, 899 F.2d 1136, 1140 (11th Cir. 1990).

<sup>10</sup> *In re Lemco Gypsum, Inc.*, 910 F.2d 784, 788 (11th Cir. 1990) (quoting *Pacor, Inc. v. Higgins*, 743 F.2d 984, 994 (3d Cir. 1984).

<sup>11</sup> *In re Cypress Health Systems Florida, Inc.*, 536 B.R. 334, 339 (Bankr. N.D. Fla. 2015) (quoting *E.S. Bankest v. United Beverage Fla.*, 284 B.R. 162, 168-169 (Bankr. S.D. Fla. 2002).

The TZ1 Causes of Action have always constituted “assets” of TZ1, and not the individual Debtors. Movants argue that because the Trustee sold the estate’s interest in TZ1, resolution of the TZ1 Causes of Action will have no conceivable effect on the Debtors’ estate. In support, Movants cite *In re Lemco Gypsum*.<sup>12</sup> In *Lemco Gypsum*, the Eleventh Circuit determined that a bankruptcy court lacked subject matter jurisdiction to enter a contempt order against a purchaser of estate assets, holding that “once property is sold, further disputes have nothing to do with the debtor’s estate.”<sup>13</sup> The Eleventh Circuit went on to note that “[o]verlap between the bankrupt’s affairs, and another dispute is insufficient *unless* its resolution also affects the bankrupt’s estate or the allocation of assets among creditors.”<sup>14</sup>

Movants are correct in asserting that proceeds that may result from the TZ1 Causes of Action will not inure to the benefit of the Debtors’ bankruptcy estate, but rather will inure solely to the benefit of TZ1. Movants overlook, however, that a dispute that fails to bring property into the estate may still be “related to” the bankruptcy case if the resolution of the dispute has an effect on the administration of the bankruptcy estate or distribution of estate property to creditors.<sup>15</sup>

When the Motion was first under consideration, Plaintiffs’ primary argument against dismissal of the TZ1 Causes of Action was that unlike the dispute in *Lemco*

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<sup>12</sup> 910 F.2d 784 (11th Cir. 1990).

<sup>13</sup> *Id.* at 789.

<sup>14</sup> *Id.* (emphasis added).

<sup>15</sup> *Id.*

*Gypsum*, the resolution of the TZ1 Causes of Action would impact whether or not the Debtors in this case receive their bankruptcy discharges. This, in turn, Plaintiffs argued, would have an effect on the administration of the Debtors' estate. This argument was not persuasive when it was initially made, and is now moot. A proceeding is related to a bankruptcy case only if the anticipated outcome of the proceeding will both "(1) alter the rights, obligations, and choices of action of the debtor, and (2) have an effect on the administration of the estate."<sup>16</sup> Denial of Defendants' discharges will have no effect on administration of the bankruptcy estate. The only effect of denial of Debtors' discharges will be on Debtors and on any creditors whose claims will therefore survive Defendants' Chapter 7 filing.<sup>17</sup>

Plaintiffs also argue that this Court is familiar with the underlying facts, and should keep the TZ1 Causes of Action to avoid piecemeal litigation. This argument is also unpersuasive. Judicial economy itself does not justify federal jurisdiction.<sup>18</sup> The test for "related to" jurisdiction is indeed broad, but there are limits. Nothing in the TZ1 Causes of Action will impact the administration or handling of the Debtors'

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<sup>16</sup> *In re Bass*, 171 F.3d 1016, 1022 (5th Cir. 1999).

<sup>17</sup> *See In Re Boone*, 52 F.3d 958, 961 (11th Cir. 1995) ("The lack of effect on the estate is thus fatal to bankruptcy jurisdiction over the claim."). Further, this argument is moot. The Court announced from the bench on October 6, 2016 that Defendants' discharges would be denied, and has issued its written findings of fact, conclusions of law and a Final Judgment to that effect. *See Findings of Fact, Conclusions of Law and Memorandum Opinion in Support of Final Judgment for Plaintiffs on Count VIII of Complaint*, Adversary Proceeding 13-01007-KKS, Doc. 915, *Final Judgment for Plaintiffs on Count VIII of Complaint*, Adversary Proceeding 13-01007-KKS, Doc. 916.

<sup>18</sup> *See In re Lemco Gypsum*, 910 F.2d at 789 (quoting *Pacor, Inc. v. Higgins*, 743 F.2d 984, 994 (3rd Cir. 1984); *see also In re Boone*, 52 F.3d at 960-61; *In re Soderstrom*, No. 6:12-cv-1205-Orl-37, 2013 WL 24205 at \*4 (M.D. Fla. Jan. 2, 2013).

bankruptcy estate, so the Court does not have, and should not assume, “related to” jurisdiction.<sup>19</sup>

In the Motion to Reconsider, Plaintiffs request that this Court remand or transfer the TZ1 Causes of Action to state court, where Plaintiffs have similar causes of action pending.<sup>20</sup> In support of this request Plaintiffs cite Rule 60(b)(6), which permits a court to grant relief from a judgment, order or proceeding for “any other reason that justifies relief.”<sup>21</sup> Plaintiffs correctly point out that the TZ1 Causes of Action were timely filed by the Chapter 7 Trustee. Their apparent concern is dismissal of the TZ1 Causes of Action may result in a “windfall” to Movants by providing them an argument that the dismissal is *res judicata* as to similar claims filed by Plaintiffs against Movants in state court.

In opposition to the Motion to Reconsider, Movants, who are Defendants to the TZ1 Causes of Action, argue that there is no procedural basis for remand of the TZ1 Causes of Action because those causes of action were not removed to this Court in the first instance. They also claim that if this Court grants relief akin to remand or transfer of the TZ1 Causes of Action, they will be prejudiced because certain

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<sup>19</sup> In fact, the Trustee’s administration of the Debtors’ bankruptcy estate is nearing an end. The Trustee has filed a Final Report which is set for hearing on February 2, 2017. (Case No. 12-10462, Docs. 673, 678.)

<sup>20</sup> *Tutoringzone, LC, v. Tutoringzone II, LLC*, in the Circuit Court, Eighth Judicial Circuit, in and for Alachua County, Florida, Case No.: 01-2016-CA-002005 (the “State Court Action”).

<sup>21</sup> Fed. R. Civ. P. 60(b)(6), made applicable by Fed. R. Bankr. P. 9024.

affirmative defenses, specifically including a potential defense of *res judicata*, may be undermined.

This Court's dismissal of the TZ1 Causes of Action was not intended, nor can it be construed, as a ruling on the merits of those causes of action. The dismissal of the TZ1 Causes of Action was due only to lack of jurisdiction and was not intended to, and should not have *res judicata* effect. The TZ1 Causes of Action were preserved as assets of TZ1 as of the date they were filed in this Adversary Proceeding. The TZ1 Causes of Action remained assets of TZ1 as of the date of the Trustee's sale of TZ1 to Plaintiffs. The dismissal of the TZ1 Causes of Action was not meant to prejudice, nor should it be construed as prejudicial to, either Plaintiffs or Movants.

For the reasons set forth in this Amended Order and announced at the hearing on December 1, 2017, it is

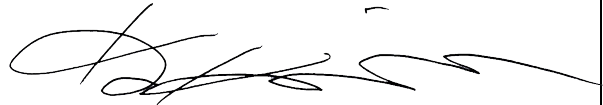
ORDERED:

1. Christopher James, TutoringZone II, LLC and Cynthia Frenchman's Motion to Dismiss, or in the Alternative, Motion to Abstain (Doc. 156) is GRANTED.
2. The TZ1 Causes of Action (Counts XVI, XVII, XVIII, IXX, and XX of the Complaint) are dismissed from this Adversary Proceeding for lack of jurisdiction, but are preserved for TZ1 *nunc pro tunc* to October 11, 2016.



3. This dismissal shall not be construed as *res judicata*, or as a ruling on the merits in favor of or against either Plaintiffs or Movants.
4. To the extent that Plaintiffs have filed claims in state court that mimic or mirror the TZ1 Causes of Action, Movants' defenses to those claims, other than on the basis of *res judicata* due to the dismissal of those causes of action from this Adversary Proceeding, are fully preserved.

DONE and ORDERED on February 3, 2017.



KAREN K. SPECIE  
United States Bankruptcy Judge

cc: All interested parties.